

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KATHLEEN M. MEFFORD-WHEAT,)	
CHRISTOPHER PATRICK MEFFORD,)	No. CV-11-465-CI
)	
Plaintiffs,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO DISMISS PURSUANT
)	TO FED. R. CIV. P. 12(c)
LT. KAREN JASPER,)	
)	
Defendant.)	
)	
)	

BEFORE THE COURT is Plaintiffs' Amended Complaint, Defendants' Answer to the Amended Complaint, and Defendant Karen Jasper's Motion to Dismiss, a ruling on which was reserved by the undersigned in an Order filed May 29, 2012. (ECF No. 21, 28, 29.) The parties have consented to proceedings before a magistrate judge. (ECF No. 16.)

BACKGROUND

On December 20, 2011, Plaintiffs Kathleen M. Mefford-Wheat and her son, Christopher P. Mefford, filed their original *pro se* civil rights complaint seeking injunctive relief and monetary damages for violations of their constitutional rights under the Sixth, Eighth, and Fourteenth Amendments (Complaint). (ECF No. 1.) Defendants, employees of the Department of Corrections of the State of Washington (DOC), are represented by Assistant Attorney General, Corrections Division, Brian J. Considine. The parties consented to proceedings before a magistrate judge on March 13, 2013. (ECF No. 16.)

On March 30, 2012, Defendant Jasper moved for judgment on the

1 pleadings, arguing facts alleged in the Complaint do not state a
2 claim for which relief can be granted under Section 1983. (ECF No.
3 21.) On May 29, 2012, the court found the Complaint failed to state
4 a claim under § 1983, gave Plaintiffs an opportunity to file an
5 amended complaint, reserved its ruling on Defendant's Motion for 60
6 days, and stayed discovery. (ECF No. 27 at 8-9.) Plaintiffs' filed
7 their First Amended Complaint on June 26, 2012, adding a "Jane Doe
8 Johnson" as Defendant, and claiming Fourteenth Amendment due process
9 violations. (ECF No. 28.)

10 For the reasons stated below and in the court's May 29, 2012,
11 Order, the court **GRANTS** Defendant's Motion for judgment on the
12 pleadings and dismisses Plaintiffs' Complaint and Amended Complaint
13 with prejudice.

14 **STANDARD OF REVIEW**

15 As discussed in the court's Order reserving its ruling, a
16 motion for judgment on the pleadings under FED. R. CIV. P. 12(c) is
17 reviewed under standards equivalent to a motion for dismissal for
18 failure to state a claim under FED. R. CIV. P. 12(b)(6). The court
19 may consider exhibits attached to a complaint without converting a
20 motion to dismiss to one for summary judgment. *Parks School of*
21 *Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).
22 Failure to present enough facts to state a claim for relief that is
23 plausible on the face of the complaint will subject that complaint
24 to dismissal. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 562
25 (2007) (*citations omitted*). "Dismissal can be based on the lack of
26 a cognizable legal theory or the absence of sufficient facts alleged
27 under a cognizable theory." *Balistreri v. Pacifica Police Dep't*.
28 901 F.2d 696, 699 (9th Cir. 1990)(second amended opinion)(overruled

1 *in part by Twombly, supra, at 562-63).*

2 "For purposes of a motion to dismiss, the material allegations
3 of the complaint are taken as admitted." *Jenkins v. McKeithen*, 395
4 U.S. 411, 421 (1969). The court construes a *pro se* complaint
5 liberally in favor of the plaintiff; however, the court will not
6 supply an essential fact that is not included in the plaintiff's
7 complaint. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992)(*quoting*
8 *Ivey v. Board of Regents of Univ. Of Alaska*, 673 F.2d 266, 268 (9th
9 Cir. 1982). Conclusory allegations of violations of constitutional
10 rights by a prison official are insufficient to withstand a motion
11 to dismiss. *Id.*

12 **FIRST AMENDED COMPLAINT**

13 Material facts alleged in the First Amended Complaint indicate
14 Plaintiffs were visiting an inmate at the Airway Heights Correction
15 Center when their visit was terminated by corrections officers.
16 Plaintiffs were escorted out of the visiting room by Defendant
17 Johnson. Plaintiff Mefford remained by the door; Defendant Mefford-
18 Wheat was questioned by Defendant Jasper in another room regarding
19 suspected transfer of contraband to the inmate. Plaintiffs allege
20 Defendants Johnson and Jasper put them "in fear of injury or death"
21 if they did not comply with their orders, "based on their tone of
22 voice and size of Defendant Jasper"; accused them of committing a
23 crime; and "placed them in fear of property loss." ECF No. 28 at 1-
24 3. Plaintiffs allege Defendant Jasper's mode of questioning was in
25 violation of written policies of the Department of Corrections that
26 direct (1) visitors may be detained for law enforcement only if
27 found in possession of contraband, and (2) may not be questioned
28 while detained and awaiting law enforcement's arrival. *Id.* at 3.

1 Plaintiffs allege Defendants deprived them of their
2 constitutional rights when they violated established DOC procedures.
3 They claim Defendants "detained" Plaintiff Mefford "in a chair," and
4 "detained" Plaintiff Mefford-Wheat "in the back of the room," thus
5 depriving them, without due process, of their liberty to leave the
6 DOC facility.

7 **FOURTEENTH AMENDMENT CLAIM**

8 To establish a Fourteenth Amendment due process violation,
9 Plaintiffs must allege deprivation, by the government, of a liberty
10 or property interest protected by the constitution, without due
11 process. Property rights are defined by state law. *Portman v.*
12 *County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993).

13 In their Amended Complaint, Plaintiffs do not identify a
14 property interest or a liberty interest that is protected by the
15 Fourteenth Amendment of the Constitution. Plaintiffs appear to argue
16 DOC administrative policies regulating the search and detainment of
17 correction facility visitors have created constitutionally protected
18 interests for visitors. They claim Defendant Jasper's alleged
19 failure to abide by the relevant policies violated their due process
20 rights under the Fourteenth Amendment. Neither the facts nor the
21 law support this claim.

22 The DOC has promulgated internal policies regulating searches
23 and detainment of facility visitors to minimize the introduction of
24 contraband into the prison system. See ECF No. 29 at 12-19. These
25 internal procedural guidelines do not have the force of law and
26 cannot give rise to due process claims. See *James v. United States*
27 *Parole Commission*, 159 F.3d 1200, 1205 (9th Cir. 1998)(internal
28 guidelines are not enforceable in federal court); see also *United*

1 *States v. Fifty-Three (53) Eclectus Parrots*, 685, F2d 1131, 1136 (9th
2 Cir. 1982)(agency policy directives cannot be asserted against the
3 government). Further, the implementation of agency policies or
4 rules does not create a liberty interest protected by due process
5 law. *Kentucky Department of Corrections v. Thomas*, 490 U.S. 454,
6 4559 (1989). Plaintiff offers no legal theory as to how prison
7 policies regulating visitation with inmates has created a property
8 or liberty interest.

9 In addition, the Amended Complaint does not allege facts that
10 rise to the level of deprivation of a liberty interest. Plaintiffs
11 do not assert they were detained physically, searched, charged with
12 a crime, or arrested by law enforcement. The allegation that they
13 were intimidated and felt compelled to comply with Defendants'
14 orders due to Defendant Johnson's size and Defendant Jasper's
15 forceful questioning does not establish a deprivation of liberty
16 protected by the Fourteenth Amendment. See *Paul v. Davis*, 424 U.S.
17 693, (1976) (perceived injury inflicted by state actor does not
18 invoke Fourteenth Amendment protection); see also *DM Research, Inc.*
19 *v. College of American Pathologists*, 170 F.3d 53, 55 (1st Cir. 1999)
20 (subjective characterizations and bald assertions insufficient to
21 state civil rights claim); *Portman*, 995 F.2d at 904 (claimed
22 property interest must be easily defined to be constitutionally
23 protected). Plaintiffs' Amended Complaint fails to alleges facts
24 sufficient to establish the essential elements of a Fourteenth
25 Amendment due process claim. Therefore, dismissal is appropriate.

26 **QUALIFIED IMMUNITY**

27 The doctrine of qualified immunity protects a state actor from
28 liability where, as here, her conduct does not violate "clearly

1 established statutory or constitutional rights of which a reasonable
2 person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231
3 (2009). Even if a prison official's action resulted from a mistake
4 of law or mistake of fact, the doctrine of qualified immunity
5 shields her from the burdens of litigation and liability, as long as
6 the official was performing her duties reasonably. *Id.* at 231.

7 The qualified immunity analysis involves two steps:
8 determination of whether (1) the alleged constitutional right was
9 clearly established, and (2) the prison official reasonably believed
10 his conduct did not violate a clearly established constitutional
11 right. *Robinson v. York*, 566 F.3d 817, 821 (9th Cir. 2009). The
12 inquiry "must be undertaken in light of the specific context of the
13 case, not as a broad general proposition." *Saucier v. Katz*, 533
14 U.S. 194, 201 (2001); see *Davis v. Scherer*, 468 U.S. 183, 196-97
15 (1984)(prison official not subject to suit merely because official
16 did no follow prison administrative regulation).

17 To defeat the affirmative defense of qualified immunity,
18 Plaintiffs must prove the alleged constitutional right was
19 sufficiently clear that a reasonable officer would understand what
20 he is doing is unconstitutional. *Brosseau v. Haugen*, 543 U.S. 194,
21 199 (2004). In the context of a prison visitors room, where the
22 safety of the public and security of the facility are exceptionally
23 compelling considerations, the courts accord "wide-ranging
24 deference" to prison officials decision-making. The courts
25 recognize that prison officials "must be free to take appropriate
26 action to ensure safety of inmates and corrections personnel" and to
27 prevent escape or, in this case, the introduction of unauthorized
28 contraband. *Bell v. Wolfish*, 444 U.S. 520, 547-48 (1979).

1 As discussed above, Plaintiffs have failed to assert a
2 constitutional right. Therefore, they cannot establish that a
3 constitutional right was clearly established at the time of the
4 alleged violation. Even accepting Plaintiffs' subjective
5 characterization of the encounter, the facts alleged in the Amended
6 Complaint do not describe unreasonable conduct by either Defendant.
7 In the context of maintaining security in a prison visitors room,
8 where the public has easy access to inmates and close supervision is
9 required, Defendant Jasper's actions were reasonable. Therefore,
10 Defendants are immune from suit and entitled to dismissal of the
11 Complaint. Accordingly,

12 **IT IS ORDERED:**

- 13 1. Defendant's Motion to Dismiss (**ECF No. 21**) is **GRANTED**;
14 2. Plaintiffs' Complaint and First Amended Complaint (ECF No.
15 1, 28) are DISMISSED WITH PREJUDICE;
16 3. Judgment shall be entered for Defendant;
17 4. Each party shall bear their own costs.

18 The District Court Executive is directed to file this Order,
19 provide a copy to Plaintiffs and counsel for Defendants and close
20 the file.

21 DATED August 29, 2012.

22
23 S/ CYNTHIA IMBROGNO
24 UNITED STATES MAGISTRATE JUDGE
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